UNITED STATES DISTRICT COURT MIDDLE DISTRICT OF TENNESSEE NASHVILLE DIVISION

CARL FRAZIER, JR.]	
Petitioner,]	
]	No. 3 10 0024
v.	-]	(3:09-mc-0204)
]	Judge Campbell
STATE OF TENNESSEE	j	
Respondent.]	

ORDER

On November 30, 2009, an order (Docket Entry No. 11) was entered denying the petitioner's application to proceed in forma pauperis. He was granted fourteen days in which to pay the \$5.00 fee required to file his § 2254 habeas corpus petition (Docket Entry No. 1).

When payment was not forthcoming within the specified period of time, an order (Docket Entry No. 14) was entered dismissing the instant action for failure to prosecute.

Unbeknownst to the Court, the petitioner had forwarded a check for \$5.00 to the Clerk's Office. The petitioner, however, did not specify what the money was for and it was applied mistakenly to a financial obligation that he had pending in another case.

The Clerk of Court has now corrected the misunderstanding and applied the \$5.00 check to the instant action. Accordingly, because the filing fee has now been paid, the order of dismissal for failure to prosecute is hereby VACATED. The Clerk is directed to REOPEN the instant case and assign it an appropriate case number.

The Court has conducted a preliminary review of the petition and finds that the petitioner has stated a colorable claim for relief. Rule 4, Rules --- § 2254 Cases. Accordingly, the respondent

shall file an answer, plead or otherwise respond to the petition in conformance with Rule 5, Rules --- § 2254 Cases, within thirty (30) days of the date of entry of this order on the docket. The response shall state whether this case is a second or successive petition under 28 U.S.C. § 2244 (b)(3)(A). The respondent shall also address the question of whether the petition is timely.

The Clerk is directed to serve a copy of the petition and this order by certified mail on the Attorney General of Tennessee. Rule 4, Rules --- § 2254 Cases.

It is so ORDERED.

Todd Campbell

United States District Judge